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SENATE BILL 579

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Pete Campos

AN ACT

RELATING TO INSURANCE; AMENDING A SECTION OF THE WORKERS'
COMPENSATION ACT TO INCREASE THE ALLOWABLE LIMIT ON ATTORNEY
FEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 52-1-54 NMSA 1978 (being Laws 1987,
Chapter 235, Section 24, as amended) is amended to read:

"52-1-54. FEE RESTRICTIONS--APPOINTMENT OF ATTORNEYS BY
THE DIRECTOR OR WORKERS' COMPENSATION JUDGE--DISCOVERY COSTS--
OFFER OF JUDGMENT--PENALTY FOR VIOLATIONS.--

A. It is unlawful for any person to receive or
agree to receive any fees or payment directly or indirectly in
connection with any claim for compensation under the Workers'
Compensation Act except as provided in this section.

B. In all cases where the jurisdiction of the

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1 workers' compensation administration is invoked to approve a
2 settlement of a compensation claim under the Workers'
3 Compensation Act, the director or workers' compensation judge,
4 unless the claimant is represented by an attorney, may in [~~his~~]
5 the director's or judge's discretion appoint an attorney to aid
6 the workers' compensation judge in determining whether the
7 settlement should be approved and, in the event of an
8 appointment, a reasonable fee for the services of the attorney
9 shall be fixed by the workers' compensation judge, subject to
10 the limitation of Subsection I of this section.

11 C. In all cases where the jurisdiction of the
12 workers' compensation administration is invoked to approve a
13 settlement of a compensation claim under the Workers'
14 Compensation Act and the claimant is represented by an
15 attorney, the total amount paid or to be paid by the employer
16 in settlement of the claim shall be stated in the settlement
17 papers. The workers' compensation judge shall determine and
18 fix a reasonable fee for the claimant's attorney, taking into
19 account any sum previously paid, and the fee fixed by the
20 workers' compensation judge shall be the limit of the fee
21 received or to be received by the attorney in connection with
22 the claim, subject to the limitation of Subsection I of this
23 section.

24 D. The cost of discovery shall be borne by the
25 party who requests it. If, however, the claimant requests any

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1 discovery, the employer shall advance the cost of paying for
2 discovery up to a limit of three thousand dollars (\$3,000). If
3 the claimant substantially prevails on the claim, as determined
4 by a workers' compensation judge, any discovery cost advanced
5 by the employer shall be paid by that employer. If the
6 claimant does not substantially prevail on the claim, as
7 determined by a workers' compensation judge, the employer shall
8 be reimbursed for discovery costs advanced according to a
9 schedule for reimbursement approved by a workers' compensation
10 judge.

11 E. In all cases where compensation to which any
12 person is entitled under the provisions of the Workers'
13 Compensation Act is refused and the claimant thereafter
14 collects compensation through proceedings before the workers'
15 compensation administration or courts in an amount in excess of
16 the amount offered in writing by an employer five business days
17 or more prior to the informal hearing before the
18 administration, the compensation to be paid the attorney for
19 the claimant shall be fixed by the workers' compensation judge
20 hearing the claim or the courts upon appeal in the amount the
21 workers' compensation judge or courts deem reasonable and
22 proper, subject to the limitation of Subsection I of this
23 section. In determining and fixing a reasonable fee, the
24 workers' compensation judge or courts shall take into
25 consideration:

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1 (1) the sum, if any, offered by the employer:

2 (a) before the worker's attorney was
3 employed;

4 (b) after the attorney's employment but
5 before proceedings were commenced; and

6 (c) in writing five business days or
7 more prior to the informal hearing;

8 (2) the present value of the award made in the
9 worker's favor; and

10 (3) any failure of a party to participate in a
11 good-faith manner in informal claim resolution methods adopted
12 by the director.

13 F. After a recommended resolution has been issued
14 and rejected, but more than ten days before a trial begins, the
15 employer or claimant may serve upon the opposing party an offer
16 to allow a compensation order to be taken against ~~him~~ the
17 employer or claimant for the money or property or to the effect
18 specified in ~~his~~ the offer, with costs then accrued, subject
19 to the following:

20 (1) if, within ten days after the service of
21 the offer, the opposing party serves written notice that the
22 offer is accepted, either party may then file the offer and
23 notice of acceptance together with proof of service thereof,
24 and thereupon that compensation order may be entered as the
25 workers' compensation judge may direct. An offer not accepted

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1 shall be deemed withdrawn, and evidence thereof is not
2 admissible except in a proceeding to determine costs. If the
3 compensation order finally obtained by the party is not more
4 favorable than the offer, that party shall pay the costs
5 incurred by the opposing party after the making of the offer.
6 The fact that an offer has been made but not accepted does not
7 preclude a subsequent offer;

8 (2) when the liability of one party to another
9 has been determined by a compensation order, but the amount or
10 extent of the liability remains to be determined by further
11 proceedings, the party adjudged liable may make an offer, which
12 shall have the same effect as an offer made before trial if it
13 is served within a reasonable time not less than ten days prior
14 to the commencement of hearings to determine the amount or
15 extent of liability;

16 (3) if the employer's offer was greater than
17 the amount awarded by the compensation order, the employer
18 shall not be liable for [~~his~~] the employer's fifty percent
19 share of the attorney fees to be paid the worker's attorney and
20 the worker shall pay one hundred percent of the attorney fees
21 due to the worker's attorney; and

22 (4) if the worker's offer was less than the
23 amount awarded by the compensation order, the employer shall
24 pay one hundred percent of the attorney fees to be paid the
25 worker's attorney, and the worker shall be relieved from any

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1 responsibility for paying any portion of the worker's attorney
2 fees.

3 G. In all actions arising under the provisions of
4 Section 52-1-56 NMSA 1978 where the jurisdiction of the
5 workers' compensation administration is invoked to determine
6 the question whether the claimant's disability has increased or
7 diminished and the claimant is represented by an attorney, the
8 workers' compensation judge or courts upon appeal shall
9 determine and fix a reasonable fee for the services of the
10 claimant's attorney only if the claimant is successful in
11 establishing that [~~his~~] the claimant's disability has increased
12 or if the employer is unsuccessful in establishing that the
13 claimant's disability has diminished. The fee when fixed by
14 the workers' compensation judge or courts upon appeal shall be
15 the limit of the fee received or to be received by the attorney
16 for services in the action, subject to the limitation of
17 Subsection I of this section.

18 H. In determining reasonable attorney fees for a
19 claimant, the workers' compensation judge shall consider only
20 those benefits to the worker that the attorney is responsible
21 for securing. The value of future medical benefits shall not
22 be considered in determining attorney fees.

23 I. Attorney fees, including, but not limited to,
24 the costs of paralegal services, legal clerk services and any
25 other related legal services costs on behalf of a claimant or

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1 an employer for a single accidental injury claim, including
2 representation before the workers' compensation administration
3 and the courts on appeal, shall not exceed [~~sixteen thousand~~
4 ~~five hundred dollars (\$16,500)] twenty thousand dollars
5 (\$20,000) for claims related to an injury that occurs on or
6 after July 1, 2009. This limitation applies whether the
7 claimant or employer has one or more attorneys representing
8 [~~him~~] the claimant or employer and applies as a cumulative
9 limitation on compensation for all legal services rendered in
10 all proceedings and other matters directly related to a single
11 accidental injury to a claimant. The workers' compensation
12 judge may exceed the maximum amount stated in this subsection
13 in awarding a reasonable attorney fee if [~~he~~] the judge finds
14 that a claimant, an insurer or an employer acted in bad faith
15 with regard to handling the injured worker's claim and the
16 injured worker or employer has suffered economic loss as a
17 result. However, in no case shall this additional amount
18 exceed two thousand five hundred dollars (\$2,500). As used in
19 this subsection, "bad faith" means conduct by the claimant,
20 insurer or employer in the handling of a claim that amounts to
21 fraud, malice, oppression or willful, wanton or reckless
22 disregard of the rights of the worker or employer. Any
23 determination of bad faith shall be made by the workers'
24 compensation judge through a separate fact-finding proceeding.~~

25 J. Except as provided [~~for~~] in Paragraphs (3) and

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1 (4) of Subsection F of this section, the payment of a
2 claimant's attorney fees determined under this section shall be
3 shared equally by the worker and the employer.

4 K. It is unlawful for any person except a licensed
5 attorney to receive or agree to receive any fee or payment for
6 legal services in connection with any claim for compensation
7 under the Workers' Compensation Act.

8 L. Nothing in this section applies to agents,
9 excluding attorneys, representing employers, insurance carriers
10 or the subsequent injury fund in any matter arising from a
11 claim under the Workers' Compensation Act.

12 M. No attorney fees shall be paid until the claim
13 has been settled or adjudged.

14 N. Every person violating the provisions of this
15 section is guilty of a misdemeanor and upon conviction shall be
16 fined not less than fifty dollars (\$50.00) or more than five
17 hundred dollars (\$500), to which may be added imprisonment in
18 the county jail for a term not exceeding ninety days.

19 O. Nothing in this section shall restrict a
20 claimant from being represented before the workers'
21 compensation administration by a nonattorney as long as that
22 nonattorney receives no compensation for that representation
23 from the claimant."

24 Section 2. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2009.

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